

THE EUROPEAN COMMON FISHERIES POLICY: A LEGAL ANALYSIS

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Since 1 January 2003, the European Union has had a new fisheries policy. The twenty year old Common Fisheries Policy (CFP) needed reforms as it was not effective enough in doing what it had been created to do, that is to conserve fish stocks, protect the marine environment, ensure the economic viability of the European fleets and provide good quality food to consumers. The current state of over-exploitation of the marine living resources, combined with the increasing pollution of the marine environment in European and international waters, called for a radical and urgent change in management approach. One of the topics to be reviewed under this umbrella is the international dimension of the CFP and the enhancement of the effectiveness of the CFP, i.e. control and enforcement.

The main problem with the current system is the lack of uniformity in the enforcement of CFP rules. The organisation of control and monitoring activities in the Member States is fragmented; monitoring and inspection resources are therefore not being used in an optimal way. At the EU level, the absence of harmonisation of sanctions and the limited powers of Community inspectors (in particular the fact that they are not allowed to conduct independent inspections) are major obstacles to effective action. A satisfactory follow-up of infringements has not been achieved. Heterogeneous legal systems often result in different treatment and sanctions from one Member State to another. Moreover, the Commission has not been able to pursue Member States' infringements adequately due to the legal limitations of the current system. As the community has one of the largest fishing fleets in the world, a significant part of its fishing sector depends on access to non-Community resources. An important part of these resources is presently managed by Regional Fisheries Organisations (RFO's) and bilateral agreements. Until now it has not been possible to adopt a Community position on the control of fishing activities in the framework of RFO's. Therefore an urgent need exists to define the respective responsibilities of the Commission and the Member States in this domain, especially in respect to the implementation of monitoring arrangements adopted and applied by RFO's. The lack of a clear Community strategy on control and monitoring of fishing activities in international waters jeopardises efforts to meet the Community's international obligations and to ensure the continuation of the Community's international obligations and to ensure the continuation of the Community fleet's presence in those waters. Tackling the above-mentioned shortcomings, this study intends to open the debate on several issues:

- The improvement of control arrangements;
- The exploration of new options for more effective, more harmonised penalties;
- The general formulation of a more harmonized approach of national policies; and
- ... ultimately the formulation of one harmonized Community approach.